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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SINGH, SUNIL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. **62**

10/657,153

Applicant(s)

RUTKOWSKI, AMY

Examiner

Sunil Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 20 is/are allowed.
- 6) ☒ Claim(s) 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Gottfried (US 3779599).

Gottfried discloses a changing board comprising a changing surface for supporting the weight of an infant during a diaper change, the improvement comprising: a restraining mechanism (24,25a) for restraining shoulders of an infant during a diaper changing operation, said restraining mechanism comprising an adjustable strap system, said adjustable strap system having at least a right strap and a left strap, said right and left straps connecting to said changing board proximal a top portion at one end and proximal a middle portion at another end, and each said right and left straps including a matable element (25c) of a quick release system and being connectable one to the other by engaging said matable elements of said quick release system, and wherein said right and left straps are so designed and attached to said changing board such that said straps are capable of restraining the shoulders of an infant during a diaper changing operation.

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3. Claims 14,15,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alivizatos (US 4689844) in view of Gottfried (US 3779599)

Alivizatos discloses an apparatus comprising a generally planar shield portion (see Figs. 1,2) having an upper surface supporting an infant and lower surface contacting a diaper changing support surface, said shield portion comprising fabric pocket, said fabric pocket having a compartment having an aperture. The fabric pocket includes an inner liquid permeable shell (28). The fabric pocket is a comfortable changing surface (see col. 3 line 45+). Alivizatos discloses the invention substantially as claimed.

However, Alivizatos lacks shoulder restraining means. Gottfried teaches shoulder restraining means ((24,25a), see Fig.1). It would have been considered obvious to one of ordinary skill in the art to modify Alivizatos by substituting the restraining means as taught by Gottfried for the restraining means disclosed by Alivizatos since it is a design choice to restrain either the upper portion, the lower portion or both the upper and lower portion of the infant to prevent the infant from falling off the support structure. It should be noted that supporting the upper half allows for the baby to have his/her diaper changed while still being restrained.

4. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alivizatos in view of Gottfried as applied to claim 15 above, and further in view of Nappe (US 2834970).

Alivizatos (as modified above) discloses the invention substantially as claimed.

However, Alivizatos (as modified above) lacks a layer of padding between the outer

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layer and the inner layer. Nappe teaches a layer of padding (14) between an outer layer (12) and inner layer (13). It would have been considered obvious to one of ordinary skill in the art to further modify Alivizatos (as modified above) to include the padding as taught by Nappe in order to provide additional comfort.

***Allowable Subject Matter***

5. Claims 1-13, 20 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive. Re claim 19, applicant's argument that his board "has a generally planar configuration (with or without minor contours) upon which an infant can lay while its diaper is changed" is far more limiting than the claimed subject matter. It should be noted that "a diaper changing surface" is so broad it encompasses a table, the floor, a chair, etc.; therefore, the structure shown in Gottfried, namely Figure 1 has a diaper changing surface since the term "diaper changing surface" is so broad it encompasses the structure shown in Figure 1 of Gottfried.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, knowledge generally available to one of ordinary skill in the art would teach one to substitute one restraining means for another restraining means. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). One of ordinary skill in the art has the design choice to either restrain the upper portion, the lower portion or both the upper and lower portion of the baby to prevent the infant from falling off the support structure. Having the upper portion restrained allows for the diaper to be changed.

Applicant argues that Gottfried and Alivizatos are entirely unrelated. The examiner disagrees since the both teach restraining means for infants.

### ***Conclusion***

**7. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh  
Primary Examiner  
Art Unit 3673



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5/19/05